IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 473 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL SOMABHAI BHUDARDAS - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PM RAVAL for Petitioner(s) : 1,
Mr. M.R. Mengdey, AGP for Respondent(s) : 1, 4,
RULE NOT RECD BACK for Respondent(s) : 2,
MR AJ PATEL for Respondent(s) : 3, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5,3.2.6

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/09/2005

ORAL JUDGMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 30th April 1988/7.6.1988 in Revision Application No. 9/1987 in

dismissing the same and confirming the order passed by the Deputy Collector, Patan, dated 26th August 1987 in Remand Tenancy Case No. 109/1983.

2. The dispute is with respect to the land bearing Survey No. 596 Paiki admeasuring 1 Acre and 10 Gunthas of land situate at Village Jashalpur, Taluka-Chanasma. The said land was owned by one Patel Ambaram Khodidas and the same came to be purchased by the respondent No.3 by registered Sale Deed dated 17.10.1981. The petitioner claims to be the neighbour who is having agricultural land adjacent to the aforesaid land bearing Survey No. 596-Paiki, and according to him the said land is a fragment land and he being a neighbour was entitled to purchase the land. He therefore submitted an application before the competent authority appointed under The Bombay Prevention of Fragmentation and Consolidation of Holdings Act [“the Fragmentation Act” for short] for a declaration that the sale deed dated 17.10.1981 between the respondents No. 2 and 3 is illegal and he claimed that if the respondent No.2 wanted to sell the land the said land should be sold to the petitioner only. It appears that the competent authority after holding enquiry held that the land bearing Survey No. 596-Paiki was not a fragment inasmuch as the said land was an irrigated land and withdrew the proceedings. It appears from the record that being aggrieved and dissatisfied with the order passed by the Deputy Collector, Patan,

dated 6th February 1995 in withdrawing the show cause notice/proceedings, the petitioner preferred Revision Application before the State Government and the Secretary (Appeals), Revenue Department by his judgment and order dated 6th November 1995 allowed the Revision Application No. 55 of 1995 remanded the matter to the Deputy Collector for passing an order afresh. On remand, the Deputy Collector again by order dated 26th August 1987 held that the land in question was not a fragment land and it was an irrigated and Bhagayat land and therefore the transaction between the respondent No. 2 and respondent No.3 was not hit under the provisions of the Fragmentation Act. Being aggrieved and dissatisfied with the order passed by the Deputy Collector dated 26th August 1987 the petitioner preferred Revision Application SRD No. 9/1987 before the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, and the revisional authority by judgment and order dated 7.6.1988 has dismissed the revision application confirming the order passed by the Deputy Collector, Patan, dated 26th August 1987. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, dated 7.6.1988 in Revision Application SRD No. 9/1987, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. It appears from the pleadings, that the contention on behalf of the petitioner is that both the

authorities below have materially erred in considering the land in question as an irrigated land and consequentially both the authorities below have materially erred in holding that the transaction between the respondent No.2 and respondent No.3 is not hit by the provisions of the Fragmentation Act.

4. I have gone through the orders passed by all the authorities below as well as the pleadings in the present Special Civil Application. There is a concurrent finding of fact given by both the authorities below that the land in question was an irrigated land and bhagayat land and accordingly the sale in favour of respondents No. 2 and 3 is not hit by the provisions of the Fragmentation Act. This Special Civil Application being filed under Article 227 of the Constitution of India, this Court is not required to reappreciate the evidence on record more particularly when there is a finding of fact given by both the authorities below concurrently. Both the authorities below have specifically held that the land in question is a bhagayat and irrigated land. Even otherwise, the petitioner though may be a neighbour has no locus to challenge the transaction between the respondent No.2 and respondent No.3. The petition is required to be dismissed on this ground also and in view of what is stated hereinabove.

5. For the reasons stated above, the petition

fails. Rule is discharged. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.